

TRIBUNAL INDUSTRIJALI

Decizjoni Nru:2865

Kaz Nru. 3885/JB

Fil-Kwistjoni tax-Xoghol

bejn

Vanessa Azzopardi (ID 4886(M))

u

Maitland Malta Limited (C-44838)

Illum: 18 ta' Novembru, 2022

dwar tkeccija mill-impjeg allegata li hi ngusta

Chairman : Is-Sur John Bencini B.A.(Hons)Lic.Phil., M.O.M.

FATTI TAL-KAZ.

Dan il-kaz gie referit lit-Tribunal industrijali permezz tar-Rikors ta' Vanessa Azzopardi, li gie pprezentat fir-Registru tal-Qorti fit-28 ta' Awissu, 2020 tramite l-Avv. Paul Gonzi.

Fir-rikors taghha, Vanessa Azzopardi tiddikjara li kienet impjegata mis-socjeta' ntimata fil-irwol ta' *Senior Client Administrator*. Ir-rwol taghha kien li tiehu hsieb il-manutenzjoni generali ta' *trusts*, l-inkorporazzjoni, manutenzjoni u l-amministrazzjoni ta' kull tip ta' kumpanija, abbozz ta' minuti, rizoluzzjonijiet u kwalunkwe dokumentazzjoni li jkun hemm bzon. Kienet impjegata biezla u dejjem wettqet id-dmirijiet taghha bl-akbar hila u dedikazzjoni

Fid-29 t'April, 2020, permezz ta' ittra (DOK VA 2), giet infurmata li allegatament kien naqas ix-xoghol tas-socjeta' ntimata kawza tal-pandemija COVID-19, u ghaldaqstant, l-impieg tar-rikorrenti kien qed jigi terminat a bazi ta' redundancy. Dan sehh biss ftit granet wara li d-dirigenti kienu qalu li ma kienx ser ikun hemm redundancies kawza tal-COVID-19. Sakemm giet infurmata habta w' sabta, r-rikorrenti ma kellha l-ebda hjiel illi setghet tilfet xogholha - ma kien hemm l-ebda forma ta' konsultazzjoni u b'sorpriza kbira meta infurmawha bir-redundancy, intalbet titlaq mill-impieg b'mod immedjat, anke jekk fil-fatt kellha xoghol ta' klijenti li kien ghadu ghaddej.

Tajjeb li wiehed izid illi s-Socjeta' Maitland qass biss kienet talbet lir-rikorrenti tikkunsidra xi tibdiliet temporanji fil-kundizzjonijiet tax-xoghol sabiex tigi mmitigata l-allegata htiega ta' *redundancy* kkawzata mill-COVID, li facilment setghet taghmel ai termini tal-Artiklu 42 ta-Kap 452. L-allegata redundancy ma hijiex wahda genwina inter alia ghaliex il-htiega tax-xoghol li kien qieghed isir mir-rikorrenti dejjem baqghet hemm u ghada tezisti sa' illum, billi tali xoghol huwa essenzjali ghall-operat tas-socjeta' ntimata.

Tajjed wiehed jenfasizza illi fil-gimghat u xhur qabel ma gie mitmum l-impieg, ir-rikorrenti kienet ressqet xi lmenti mal-*Human Resources* rigward xi agir ta' *bullying* minn persuni, fosthom direttur. Din il-persuna kienet qed takkuzha u tinsinwa affarijiet kontriha bil-hsieb illi twassalha ghal xi process ta' dixxiplina u kien ghalhekk li hasset il-bzonn illi tirrikorri ghall-HR. Ir-rikorrenti tinsab konvinta illi redundancy kienet biss skuza sabiex jiterminaw l-impieg minghajr ma tawha smiegh xieraq dwar l-ilmenti taghha. Jekk il-kumpanija hasset li kien hemm raguni valida ghat-tkeccija, kellha, qabel kollox, tinfirmaha w almenu taghtiha opportunita' tifhem x'inhi l-akkuza u tispjega ruhha.

Ghaldaqstant it-terminazzjoni tal-impieg taghha kienet wahda abusiva w illegali u tammonta ghal tkeccija ngusta billi ma kien hemm l-ebda raguni fil-Ligi ghat-tkeccija tar-rikorrenti. Ir-rikorrenti zzid, tikkonferma illi ghamlet zmien minghajr impieg u spiccat taccetta impieg b'rinumerazzjoni inferjuri minn dik li kellha qabel.

Ghalhekk qed titlob li dan il-kaz jkun investigat u determinat 'ai termini' tal-Kap 452 tal-Ligijiet ta' Malta.

Is-Socjeta'ntimata minn naha taghha pprezentat dikjarazzjoni tal-kaz fejn qed issostni illi l-impjegata kienet tahdem bhala *Senior Client Administrator* u giet moghtija s-sensja minhabba nuqqas serju fil-profitabilita' u t-tkabbir ekonomiku, kif ukoll telf globali li komplew jikbru b'konsegwenza tal-Covid-19. Skont l-istess kumpanija ntimata n-numru ta' klienti tar-rikorrenti beda dejjem niezlel u b'hekk il-portafoll tal-esponenti kellu impatt serju fuq il-*Cashflow* tas-Socjeta'ntimata. Wiehed irid jinnota wkoll li dan in-nuqqas ta' qliegh ga beda jinhas qabel il-pandemija tal-Covid-19, infatti fl-ahhar sentejn kien qed jigi nnutat nuqqas qawwi ta' klienti godda flimkien ma numru ta' klienti li tterminaw is-servizzi taghhom mas-Socjeta'ntimata.

Li fl-istess waqt illi l-esponenti giet moghtija s-sensja, hija kellha 18 il-klijent fuq il-portafoll taghha, li fosthom: hamsa (5) kellhom is-servizz imwaqqaf u appik li jigu tterminati minhabba inadempenza fil-pagamenti; erbgha (4) kienu fi stadju ta' likwidazzjoni u ghaldaqstant ma kienx baqghalhom hafna sabiex jigu tterminati u tnejn(2) ma kinux attivi u kienu ser jigu tterminati minhabba nuqqas ta' ottempranza mar-risk profile tas-socjeta', u ghaldaqstant dan irrizulta f'telf ta' hdax (11) il-klijent f'daqqa mill-portafoll tal-esponenti u b'hekk impatt serju fuq il-cashflow tas-socjeta'ntimata.

Inhasset il-htiega urgenti ghal haddiema ta' livell gholi minhabba pressjoni qawwiya mill-awtoritajiet finanzjarji li minghajrhom is-socjeta kienet tispicca tivvjola li l-ordnijiet legittimi ta' tali awtoritajiet, u intant kienet ghal din ir-raguni specifika, illi kellu jigi ngaggat avukat mas-Socjeta'ntimata ghall-fini ta' tali rekwiziti. Minhabba dawn ir-ragunijiet serji, kien hemm bzonn ta' pjan serju ta' ristrutturar b'vizjoni fit-tul ghaliex minghajr bazi ta' profitti sostenibbli, ma setax jkun hemm tama ghas-sopravivenza ta' l-istess Socjeta'.

Ir-ristrutturar kellu wkoll ezercizzju ta' identifikazzjoni ta' rwoli vantaggjuzi. Meta ir-rikorrenti kienet ser tinghata s-sensja, Elina Everte, li kellha l-istess rwol u li giet inaggata qabel l-esponenti, tennet li xtaqet hi stess (b'mod mhux ufficjali), li titlaq hi, izda ftit wara biddlet fehmita partikolarment minhabba il-Covid-19 u ghalhekk is-Socjeta'ntimata kienet

kostretta tittermina x-xoghol tar-rikorrenti fid-dawl tar-regola “*Last in, first out*”. Ta’ min jghid li kienu qed isiru hafna sensji mill-ufficini madwar id-dinja tal-grupp Maitland.

Is-Socjeta’ ntimata tikkonferma illi hija kienet esplorat il-possibilita’ li jsir xi arrangament skont l-artiklu 42 tal-Kap 452, izda determinat illi dan kien kollu ta’ xejn fic-cirkustanzi u semplicement kien kollu il-konsegwenza li jtawwal sitwazzjoni detrimental ghaz-zewg partijiet illi fil-klima prezenti kien car illi ma kellha l-ebda prospett ta’ rkupru fil-gejjien prevedibbli.

Is-Socjeta’ ntimata tirrigetta kull allegazzjoni fejn hija tghid illi n-notifika tat-terminazzjoni tal-impieg taghha giet ‘habta w sabta’. Tirrifjuta wkoll kull allegazzjoni ta’ kwalunkwe ghajdut illi d-diretturi wegħdu illi ma’ kellhom isiru l-ebda sensji matul il-pandemija. Fl-ahharnett is-Socjeta’ ntimata wkoll tirrifjuta kull insinwazzjoni illi s-sensja nghatat fuq bazi ta’ vendetta minhabba xi allegat ilment li sar mill-esponenti nnifisha.

Ghaldaqstant, u in vista tas-suepost, is-socjeta’ konvenuta titlob lil dan l-Onorabbli Tribunal jichad it-talbiet tal-esponent fl-intier tagħhom.

PROVI (Fil-Qosor)

F’dawn il-proceduri xehdu: Maha Arebi, Jessica Dunk, Christopher Galea, Vanessa Azzopardi, Dr. Angelica Camilleri de Marco, Valentina Aberastain, Laurent Blondel u Connor Joseph Patrick Conneely, Jeremy Azzopardi.

Maha Arebi (Direttur), meta mitluba tghid mill-Avv. Paul Gonzi jekk kinitx hi w il-bord tad-diretturi li ddecidew li Vanessa Azzopardi (Rikorrenti) ghandha tinghata r-redundancy jew kienx hemm haddiehor? Maha Arebi wiegbet,” So in the case of Vanessa, the objective was never to make anyone redundant, the decision, because Elina had already said her desire to leave the company, the decision was made on restructuring, and one of the decisions was “ok let’s not replace Elina” and we focused on the new lawyer, we moved at headcount because Maitland thinks in terms of headcount and you know at what kind of work is involved. So, we said, let’s move Elina’s headcount to a small senior position because that’s what we need at the moment”.....So the decision was taken there and then and that one of the roles would be not replaced and made redundant, so that decision was taken before on the basis that Elina was going to resign. When Covid happened Elina didn’t resign because she no longer needed to leave the island, so automatically we had one head-count less. So we had no choice but to proceed with the redundancy. Meta mistoqsija mill-Avukat Paul Gonzi, So my question is, who decided not to replace her? Was it you or was it Maitland as a company? Maha Arebi wiegbet,” Ok, I put the proposal that we are not going to replace her and I pushed that up the top. Once that was set at the top and that happened during the budget period, it was set in stone. So once that was set in stone, we couldn’t turn it back because the basis of the redundancy was there. The basis of removing the role due to loss of clients that was even pre-covid was still valid. L-Avv. Paul Gonzi staqsa,” on one hand you are saying there was no plan for redundancy, it was Elina who came to you and told you she was going to resign and then you decided not to replace her. But then in the same way you’re saying once she decided to stay there was a decision to make redundancies also, so which is the one that comes first. Maha Arebi wiegbet hekk,” Well it’s the same thing. I don’t know how I can explain it better,

so the role of Elina was meant to, there were two senior administrators and one of them was going to be removed because Elina was going to leave, it was an automatic removal.....we knew for a fact that Elina was going to leave. We knew for a fact that she was preparing to sell her apartment, she was making plans overseas. We knew for a fact.”.

Fis-seduta tat-12 ta' Frar, 2021, l-Avukat tar-rikorrenti, Avv. Paul Gonzi staqsa lil Maha Arebi, “.....you have not presented anything which signifies - at least to me-that looking at the group. Vanessa’s role had to be made redundant. Ix-xhud wiegbet, “Well, it’s about work-load. Fuq mistoqsija ohra tal-Avv. Paul Gonzi, “What is there to substantiate that?”, ix-xhud wiegbet hekk,” The most basic substantiation is the loss of clients within her role, that is the biggest. Now, if you don’t have clients, because you’re not servicing anyone..... Covid does have everything to do with business. Elina stayed because of Covid, everyone’s plans were put on hold because of Covid. Don’t forget that essentially Vanessa was meant to be the only senior administrator there. The reason she wasn’t is because of Covid because there was only one role for one senior administrator given the loss of clients.

Fuq mistoqsija tal-Avukat tar-rikorrenti,’ would you confirm that actually Vanessa was the most, or rather that Elina was originally employed as a Junior and not a Senior. Ix-xhud wiegbet,” originally when she first started at Maitland she was, I wouldn’t call her a Junior, she was a Client Administrator, and then she was promoted to a Senior Administrator.

Seduta mizmuma fit-3 ta’ Gunju: Xehdet ir-rikorrenti Vanessa Azzopardi. L-Avv. Roselyn Borg staqsiet..... I would like to point out that basically you seem to imply that you were made redundant by consequence of alleged bullying and complaints which you raised. First of all, can you please confirm whether you believe that an employer correcting an employee would, in normal circumstances constitute bullying? Do you believe that someone correcting someone is tantamount to bullying? Ir-rikorrenti wiegbet “Depends on the method of how one was corrected. Ix-xhud irrispondiet Sending harsh emails during Covid, at the time I was trying to interview to find other jobs because clearly my time there was coming to an end, as in terms of working there because I couldn’t I couldn’t work there anymore, I’m very sure they didn’t want me to work there anymore, but unfortunately with Covid I ultimately had to stay there.

L-Avv Roselyn Borg staqsiet lir-rikorrenti’ so basically as well as to remind the Tribunal and you can confirm that Elina was the only person with the same role as yours.

Witness: the same title.

Avv. Roselyn Borg: ‘Now, you claimed that she resigned, okay? And eventually she was retained, and you were made redundant instead.

Witness: I wasn’t made redundant instead of her, she resigned and then during Covid she decided to stay because everywhere was closed, as we know her intention was to leave the island which she did subsequently.

Avv. Roselyn Borg:but I am right to say that you were employed after Elina so your commencement day when you physically started working with Maitland, it was after Elina?

Witness: Yes.

Avv. Roselyn Borg: Yes, so, and you are aware of the last in first out rule?

Witness: Yes, I am.

Avv. Roselyn Borg:Did you see an actual written resignation?

Witness: I did not see an actual written resignation, she herself came to tell me and told everyone, and then it was communicated to the office.

Fis-seduta ta-15 ta' Ottubru, 2021 regat xehdet ir-rikorrenti Vanessa Azzopardi. L- Avv. Paul Gonzi staqsa lir-rikorrenti:how long did it take you to find your employment with MFSA? And what can you tell us about how does that compare, not only in terms of performance of your duties but also in terms of conditions of your employment.

Xhud: It took me roughly, from the date of redundancy about three weeks to find this job that I currently have, reason being obviously that the day I was made redundant, I also have a loan and I needed to find a job on the spot, because obviously I have to pay my home loan. I took a moratorium...and I just started looking for any job-initially in what I did as part of my experience, I looked for a Corporate Service-Corporate Admin Job because obviously that's what I know how to do, and at the time nobody was hiring.....,

Avv. Gonzi: And what about salary if you were to compare?

Xhud:I made a loss in this job, it's about 7000 Euro less per year.....

Avv. Paul Gonzi:... obviously here we're contesting the termination, right? The redundancy. In your time with Maitland,.... A year and a half, were there any issues of performance, warnings, anything of the sort of your conduct or attitude or something of the sort?

Xhud: No, I was never given a formal warning of any kind, in the first year, in fact, I was given a small raise....

Avv. Paul Gonzi:.....how did they tell you you're being made redundant, and how do you react to the way they presented this narrative to the Tribunal?

Xhud: .. there was no indication of any redundancies, or announcement through the Company that at a very high level of the Group in South Africa mainly or across, the Group, that the high-level people might be taking a pay cut and when we found out, all the employees in Malta started panicking. We had a team meeting with Connor, our Team Leader.....he assured us that no, there is no pay-cut and there are no redundancies coming, so I had no reason to doubt him.....after a couple of weeks later.... I was made redundant..... I received an email from HR ...stating that I am requested to attend this meeting, this vague meeting, and I sent an email stating" could you let me know what this relates to?" Because, of course, I want to be prepared when I'm in a meeting so that at least I know what to expect and I can present what I need, and I didn't get a response until I received a phone call and I was like 'ok', so I answered the call and HR and Connor were on the call..... it was a Teams call No video was on though.

Avv. Paul Gonzi: What about handover of the clients you were handling?

Xhud: Nothing, I wasn't told anything. I was just....that's it, revoked access and technically they said they were going to give me my five weeks' notice that they were going to pay me for it, but that was it.

Avv. Paul Gonzi: How long did that meeting last-or the call?

Xhud: It wasn't very long, it must have lasted at most, maybe five minutes. I didn't really say much, I was mostly in shock.....

Avv. Paul Gonzi: Did Elina remain employed with Maitland?

Xhud: Yes, she remained employed for another year.....

Seduta mizmuma fil-5 ta' Novembru, 2021.

Avv. Paul Gonzi: And when you say, it started going downhill, do you have concrete examples of how and with who it went downhill?

Xhud. (Rikorrenti) from. Maha's end, she started being excessively sarcastic towards me, and she'd just pick at little things I would do or say..... the way she speaks to me was like, 'this is wrong' and snapping at me,

Seduta mizmuma fit-3 ta' Dicembru 2021.

Avv. Paul Gonzi: what was the date that you were told you were being terminated?

Xhud:.....30th April, 2020.... Email dated 17th March, 2020..... Roughly ... a month before Covid really hit. I was working from home this day because Covid had sort of started, so we started rotation.

Avv. Paul Gonzi: and so what was the gist of your message?

Xhud: Basically that I can't really go on this way with the bullying happening and that unfortunately at the time Covid was happening and that I could not stand to be locked in the house and being attacked.....

Seduta mizmuma 21 ta' Mejju, 2021

Xhieda ta' Christopher Galea (rapprezentant tad-DIER)

Avv. Paul Gonzi: qabel dis-seduta, irnexxielek ticcekkja jekk ghandhomx bhala dipartiment - file relatat mal-Kumpanija?

Xhud: Yes.

Avv. Paul Gonzi: Tista tghidilna x' sibt.....

Xhud: Bazikament mir-records li ghandna fis-sistema ma jirrizultax li hemm files relatati mal-kumpanija, kif ukoll files relatati mal-kumpanija vis-a-vis any request taht Article 42..... Ma jirrizultax li kien hemm ebda tip ta' request ghal Article 42.... Bazikament Article 42 hija dik ir-regulation fil-ligi fejn jippermetti lill-employer-dejjem bi qbil mal-impjegati, li jaghmel request li jitlob ghal less favorable measures li tippermetti il-ligi..... u ma jirrizultax illi saret talba f'dan it-tip ta request biex jinbidlu xi kundizzjonijiet tax-xoghol jew.. isir xi haga specjali naha ta' Maitland Malta Limited.

Avv. Paul Gonzi: Employer jista' jbidel il-kundizzjonijiet u jaghmilhom inqas favorevoli fil-kuntast ta' pandemija minghajr ma jitlob l-awtorizzazzjoni skont Article 42?

Xhud; le ma jistax.

Avv. Roselyn Borg; ...employer, bil-fors irid japplika ghal Article 42 jekk sejjer hazin?

Xhud: Biex l-employer jibdel il-kundizzjonijiet tax-xoghol for less favorable measures, irid l-ewwel jikkuntattja d-DIER, ma jistax jaqbad u jibdel il-ligijiet minn kif inhuma maqbula mal-impjegati.

Xhieda ta' Jeremy Azzopardi. (Accounts - Corporate Client Accountant).

Avv. Matteo Pullicino: Tista tispjegali ftit id-dipartiment tal-accounts li fih tahdem, kif inhu kompost?

Xhud: Bazikament tnejn minn nies qeghdin biss, jiena u ta' fuqi.

Avv. Matteo Pullicino: ...inthom kontu tahdmu flimkien, int u Vanessa?

Xhud: Parti mill-admin kienet.... Vanessa qabli dahlet tahdem Maitland, imma sa fejn naf jien kienu fl-admin, barra Vanessa: Jessica, Elina, dawk nahseb, u kien hemm Connor fuqhom..... Illum hemm Connor, Enrico u hemm Jessica..... Elina minn dak iz-zmien telqet, m'ilux.

Avv. Mattea Pullicino: int fix-xoghol tieghek kellek interaction ma' Vanessa?

Xhud: gieli iva, bazikament ghax jien naghmel il-payments ukoll; l-Admin team jibghatuli l-payments, hemmhekk biss fejn kont l-iktar li jkolli kuntatt mal-admin team.

Avv. Mattea Pullicino: ... kien hemm zmien meta Elina kellha anqas hin mal-kumpanija, cioe' kienet tahdem anqas?

Xhud: Kienet qalbet part-time.

Seduta mizmuma fis-26 ta' Frar, 2021. Xehdet Jessica Dunk. (Corporate Administrator).

Avv. Paul Gonzi: do you know of any plans of her (Elina) to leave employment...and, if so, when did you get to know?

Xhud: At the moment, yes, and it was yesterday..... she was resigning to go travel.

Avv. Paul Gonzi: okay, and you got to know this from her?

Xhud: No, from management..... that Elina has resigned, she is going to be working with us for now and she is going to be traveling.

Seduta mizmuma fl-4 ta' Marzu 2022.

Ms Valentina Aberastain permezz ta' Teams.

Avv. Roselyn Borg:you appear to have been quite certain that Elina had resigned from Maitland in the last time you were in Tribunal.how do you know this? How come you were so certain?

Xhud: Because, as I mentioned in the previous time, she told me and we also had a meeting with Connor's team and the accounting team where they mentioned this.

Avv. Roselyn Borg: ...did you actually see an official resignation? Did you see the actual resignation yourself?.

Xhud: No, I never saw a resignation letter. I was aware of this type of communication via what the team said to us, and also she was a colleague to work of mine and she told me..... Yes, she told me she was going to resign and that she was going to work until the 31st of March 2020, on a full-time basis, and then that the first 15 days of April, she was going to work part-time and she was going to do back office work basically, not direct contact with clients.

Laurent Blondel: HR Business Partner for the Malta, Luxembourg and Guernsey offices of the Group: In recent years, the Company has been hitting depressed profitability margins, whilst client exits coupled with significant losses have led the Company reaching an EBITDA of 8% in the financial year 2017/ 2018, whilst other Companies within the global Maitland Group have reached EBITDA rates of 25% or more. In 2019, the Company had drafted restructuring plans to achieve a target of 20% by the year 2020 with the aims of increased client profitability, sustainable cost reduction for client losses and a cultural shift around performance management across the Company.

As part of this process, it was highlighted that the skill-set at the Senior Administrator level was not sufficient to alleviate the work load further up hence the role of Ms Azzopardi was not one which could be done instead of the new recruit. The need for someone with a greater skill set was therefore crucial and a new vacancy for a lawyer was set up for that purpose to relieve the pressure off the Team Leader and Head of Office, which was also a requirement

as a response to the increasingly demanding regulatory framework in the Maltese financial market. As for the two Senior Client Administrators, the tasks diminished so much that it was sufficient to keep Ms. Everte on a reduced working week. As Ms- Everte had been employed before Ms. Azzopardi, the Last-in First Out procedure had to be applied and therefore Ms. Azzopardi's role was made redundant.

Elina Everte in her affidavit says she was employed with Maitland Malta since 10th April 2017 as a Private Client Administrator and was promoted to the post of Senior Client Administrator in December 2018. In January 2020, she informed her team Leader Mr. Conor Conneely that she intended to resign within a matter of months. Ms Everte continues by saying, "At the time I made my decision to resign and to the best of my knowledge, there was no plan to replace my role",

"I then, due to the increase of the pandemic, decided to revise my plans and informed Mr. Connor Conneely and Ms. Maha Arebi that I no longer wished to resign. This was in mid-March".

Affidavit by Mr. Connor Patrick Conneely: Vanessa Azzopardi had been employed by Maitland Malta on 10th December 2018 as a Senior Client Administrator..... As Ms Everte was eventually intending to resign and leave Malta," I subsequently had a meeting with Maha Arebi to advise her that Ms Everte was eventually intending to resign from her position`. " on the 29th January, 2020, during an operations meeting..... Ms Everte's intention to resign was made public and a query was raised as to when she was resigning and who was going to replace her. "I confirmed that nobody was going to be recruited to replace Mr. Everte as there was no need for the role to be filled any longer. On the 17th March 2020, I had a meeting with Elina Everte and Maha Arebi whereby Ms. Everte advised that she no longer intended to formally resign as a Senior Private Client Administrator on the grounds that Covid 19 had disrupted her plans to go traveling as most countries were closing their borders.. On the 30th April 2020, I attended as a witness to the meeting where Ms. Vanessa Azzopardi was informed that she was being made redundant..... the fact that Ms. Azzopardi was made redundant was subsequently communicated to the rest of the Company.

SOTTOMISSJONIJIET (Fil-qosor)

Nota ta' Maitland Malta Limited: Is-sensja tar-rikorrenti Vanessa Azzopardi saret b'konsegwenza ta' taqlib ekonomiku li garbet il-pandemija tal-Covid-19. Dan gara meta is-Socjeta't imtata kienet qed thejji pjanijiet sinifikanti ta' ristritturar u li kawza ta' dan ix-xoghol tar-rikorrenti bhala Senior Client Administrator kien prattikament sfaxxa. Fl-2020 fi hdan Maitland (Malta) kien hemm zewg Senior Client Administrators, Vanessa Azzopardi u Elina Everte, izda skont il-principju tal-LIFO, kienet ir-rikorrenti li nghatat is-Sensja. Elina Everte giet impjegata f'April 2017 u ir-rikorrenti giet impjegata mal-istess Socjeta' f'Dicembru 2018.

Ix-xoghol tas-Senior Client Administrator naqas bis-shih, ma kien hemm l-ebda dubbju li dan huwa minnu sew mix-xhieda tad-direttur tas-Socjeta' Maha Aerbi u anke mill-fatt li Elina Everte kellha taqleb fuq bazi ta' part-time wara certu zmien minhabba li x-xoghol kompli

jonqos, Fil-fatt, gara li mill-21 klijent tas-Socjeta'ntimata li kellhom jigu likwidati, gew terminati 33 klijent, bi 12 ohra fil-process ta' liwidazzjoni ghaddej fil-prezent,

Ir-rikorrenti tallega illi s-sensja taghha ma kinitx genwina ghaliex temmen li saret bhala forma ta' ritaljazzjoni wara li hija ssottomettiet ilment dwar allegat bullying, meta hija esebixxiet biss emails li juru lis-superjuri taghha jikkoreguha meta tkun wettqet xi zball (vide Dok VX1 et seq.). Ma hemm l-ebda lok ta' dubbju li tali allegazzjoni ta' bullying kienet regolarment twiegeb ghalihom bi 'smiley faces' fit-test, u ghaldaqstant wiehed jistaqsi ghaliex ir-rikorrenti taghmel dawn il-mossi kontradittorji ta' dak li hija tallega li huwa bullying. Ir-rikorrenti sa anke tittanta tpingi s-sitwazzjoni ntiera bhala mossa ppjanata fit-tul minn naha tas-socjeta'ntimata sabiex ikeccuha, hekk kif johrog fil-kontro ezami taghha (seduta tat-3 ta Gunju 2022)

Ma jistax jinghad li kien hemm xi forma ta' hard-feeling' min-naha tas-socjeta'ntimata vis-a-vis ir-rikorrenti, tant li meta Elina Everte eventwalment irrezenjat mill-irwol taghha fil-bidu tas-sena 2021 (ossia sena wara s-sensja), ir-rikorrenti xorta wahda giet offruta dan l-irwol li kien fadal qabel infethu s-sejhiet esterni.

Ghal kull buon fini u sabiex jigi indirizzat kull punt relevanti ghall-kwistjoni, ghandu jinghad illi ir-rikorrenti tippersisti wkoll fl-asserzjoni li x-xoghol ta' Senior Client Administrator ma naqasx, u dan ghaliex wara li inghatat is-sensja gie ingaggat individwu iehor li ma seta qatt jitqies bhala sostituzzjoni ghar-rikorrenti, u wisq anqas ghal Elina Everte il-ghaliex l-individwu ingaggat Enrico Schintu huwa avukat bil-warrant, m' ghandu jibqa l-ebda lok ta' dubbju f'mohh dan l-Onorabbli Tribunal illi s-sensja in kwistjoni saret minhabba nuqqas qawwi fil-volum tax-xoghol stante l-effetti tal-pandemija fil-bidu tas-sena 2020, tant illi r-rikorrenti nghtat is-sensja u li sussegwentament l-unika persuna ohra li kien baqa' f'dak l-irwol kellha taqleb fuq bazi part-time.

Ghal kull buon fini, r-rikorrenti sabet xoghol iehor fi zmien tlett (3)gimghat minn notifika tas-sensja u bdiet tahdem mill-ewwel malli tterminalha n-notice period, u intant jinghad ukoll illi minkejja li r-rikorrenti tishaq li issa qed taqla paga inqas minn dik li kellha mas-socjeta'ntimata, hija ma uriet l-ebda sforz li ssib impieg ekwivalenti jew ahjar milli kellha mas-socjeta'ntimata sa minn April 2020 l'hawn.

Ghaldaqstant ma hemm l-ebda lok ta' dubbju illi t-talbiet illi r-rikorrenti qieghda taghmel quddiem dan l-Onorabbli Tribunal huwa minghajr ebda bazi la fil-fatt u wisq anqas fil-ligi, u b'hekk is-Socjeta'ntimata terga' titlob b'mod l-aktar umli sabiex dan l-Onorabbli Tribunal jichad kull talba tar-rikorrenti u jillibera lill-istess socjeta' mill-osservanza tal-gudizzju tieghu.

Nota ta' Sottomissjonijiet ta' l-Avv. Paul Gonzi f'isem ir-rikorrenti: Din il-kawza tirrigwarda tkeccija ngusta wara li r-rikorrenti tkecciet abbazi ta' redundancy, izda dan meta bhala stat ta' fatt ma kienux jissussistu c-cirkustanzi u l-kundizzjonijiet necessarji illi wasslu ghal redundancy genwina. L-impieg tar-rikorrenti gie terminat fit-30 t'April 2020, b'ittra datata 29 t' April, 2020. Ir-rikorrenti hassitha aggravata bit-terminazzjoni u dan ghal diversi ragunijiet kif spjegat minnha, cioe' li ma kienx hemm raguni genwina illi timmerita terminazzjoni ta' impieg minhabba 'redundancy'. Ir-raguni ghat-terminazzjoni ta' impieg fuq

dik il-bazi kienet fittizja inter alia stante li, a. Ix-xoghol tar-rikorrenti ma kienx gie abolit; b. Ix-xoghol rikorrenti baqa relevanti u baqa jsir minkejja illi hija tkecciet; c. It-terminazzjoni sehhet, zgur mhux b'kumbinazzjoni, ftit gimghat biss wara li hija kienet ressqet ilment ta' bullying mal-HR fil-konfront tal-management u wara d-direttrici kienet irrispondiet ghall-ilment b'attakk kontra r-rikorrenti, minghajr ma kienet taf ir-rikorrenti li dak l-ilment kien wasal ghandha. In ogni kaz ir-regola ta' LIFO ma gietx rispettata.

Is-Socjeta'ntimata ma resqitx provi biex tiggustifika r-redundancy, izda mill-banda l-ohra r-rikorrenti resqet provi kuntrarji, u cioe' provi dwar il-qagħda finanzjarja tal-istess socjeta', u saħansitra prova dokumentat, mahruġa mill-awdituri stess tas-socjeta', u ffirmata mid-diretturi, li jirrifletti car li s-socjeta' ma kienitx milquta hazin mil-Covid kif qed tallega, u l-anqas ma kienet qed tipprevedi li ser tigi milquta hazin mill-Covid saħansitra sena wara li tkecciet ir-rikorrenti. Kienet ir-rikorrenti stess li resqet id-dikjarazzjonijiet finanzjarji għas-sena finanzjarja li spiccat f' April 2020. Fil-fatt waqt kontro-ezami ta' Maha Arebi dwar dan ir-rapport finanzjarju (Doc PG 3), meta mitluba tikkonferma jekk kinitx qed taqbel mac-cifri tal-profitti wiegħbet, "Well, if you're reading it, then yes,". Fid-dokument jingħad fid-Director's Report (iffirmat kwindi minn Maha Arebi) li "The Directors have reviewed the company's cash flow forecast for the year 30th April 2021, and in the light of this review and the current financial position, they are satisfied that the company has or has access to adequate resources to continue in operational existence for the foreseeable future". Hemm ukoll dikjarazzjoni tad-diretturi f'dan ir-rapport li tgħid: " The Directors are well aware of the potential impact of Covid-19 will have on the company. The Covid-19 pandemic has had no significant impact to date on carrying values of assets and liabilities since the reporting date". Din id-dikjarazzjoni giet iffirmata fit-23 ta' Settembru 2020 u cioe' ftit xhur wara li tkecciet ir-rikorrenti minhabba suppost problemi finanzjarji, kkawzati minhabba l-Covid.

Wieħed ma jistax hliet jikkumenta illi hija wisq inverosimili illi s-Socjeta' ntimata l-ewwel tagħti l-impresjoni ta' falliment u urgenza, izda mill-banda l-ohra, kien hemm biss impjegat wieħed li gie impattat, minghajr ebda impatt iehor fuq l-impjegati l-ohra, qas biss temporanjament.

Is-Socjeta'ntimata hija skorretta meta tgħid illi applikat ir-regola tal- LIFO - u dan għaliex ir-rikorrenti giet impjegata b'kuntratt ta' impieg qabel ma giet impjegata/promossa Elina fil-klassi ta' Senior. Elina kienet l-aħħar persuna li giet impjegata fil-klassi ta' Senior.

Kif diga intqal matul il-kawza, is-socjeta' ntimata tat raguni ohra għat-tkeccija u cioe' li s-socjeta' ntimata kellha bzonn nies aktar kapaci cioe' hija allegat, li kien hemm urgenza għal haddiema ta' livell għoli, ossia superjuri u b'hekk, kellha tagħti s-sensja lill-esponenti. Tajjeb jigi enfasizzat li dan huwa biss 'after thought' tas-socjeta'ntimata u dan stante illi din r-raguni qas biss issemmiet fl-ittra tar-redundancy jew fil-laqħa meta s-socjeta' infurmat lir-rikorrenti bir-redundancy.

Tajjeb jigi enfasizzat, li s-Socjeta'ntimata mhux talli naqset tapplika il-mekkanizmu tal-Wage Supplement, izda talli l-anqas biss staqsiet lill-esponenti jekk kieku kienitx tilqa' tali talba, dejjem sabiex jigu esplorati alternattivi għal sensja zejda u evitabbli.

Jidher bic-car li t-tkeccija tal-esponenti la kienet verament sforz ta' redundancy, u lanqas kienet verament l-ahhar ghazla. Il-process ta' kif saret it-terminazzjoni tal-esponenti ma jirriflettix il-mod trasparenti u kompassjonat li hu mistenni mill-principal. Ghaldaqstant, l-esponenti titlob lill dan l-Onorabbli Tribunal, sabiex filwaqt li jichad l-eccezzjonijiet kollha tas-Socjeta'ntimata, jilqa t-talbiet tal-esponenti fit-total taghhom u jaghmel dawk ir-rakkomandazzjonijiet li jidhirlu xierqa u opportuni.

KUNSIDERAZZJONIJIET

Il-kompitu ta' dan it-Tribunal kien li jiddeciedi jekk it-terminazzjoni mill-impieg kinitx ghal raguni tajba u bizzejjed skond il-ligi. Dan ghamlu billi analizza l-fatti u xtarr bir-reqqa dovuta l-argumenti kollha mqajjma matul dan il-process li kien ilu ghaddej sentejn, u dan kif gew sponuti mix-xhieda u bosta dokumenti mill-partijiet. Filwaqt illi l-kumpanija ntimata sostniet illi t-terminazzjoni tar-rikorrenti kienet gustifikata abbazi ta' *redundancy*, ir-rikorrenti sostniet illi dan mhux minnu u mhux sorrett mill-fatti kif johorgu mic-cirkustanzi tal-kaz.

It-Tribunal wara li ezamina dak li intqal mix-xhieda, qieghed jaghti aktar kredibilita' lir-rikorrenti bil-mod kif zvolgew l-affarijiet u kif saret it-terminazzjoni taghha. Hareg car hafna mix-xhieda li nghatat minn diversi persuni, fosthom impjegati gholja fi hdan is-Socjeta' ntimata li r-rikorrenti kienet persuna tal-affari taghha u li twettaq ix-xoghol taghha *to the best of her ability*. Ir-rikorrenti kienet impjegata mis-Socjeta'ntimata fi-irwol ta' *Senior Client Administrator* f'Socjeta' li hija wahda minn diversi entitajiet fil-Grupp Maitland. Ma kien hemm l-ebda kritika negattiva fil-konfront tar-rikorrenti li dejjem wettqet id-dmirijiet taghha bl-akbar hila, anzi kien hemm okkazzjoni meta nghatat bonus.

Kif gara fid-dinja kollha, il-COVID-19 gabet u holqot diffikultajiet, xi uhud kbar f'dak li huwa negozju u qliegh finanzjarju. Izda il-qagħda finanzjarja tas-Socjeta' ntimata li hija bazata Malta, mhux li ntlaqtet b'mod goff. Dan kif hareg minn xi xhieda kif ukoll minn dokument ufficjali tal-istess socjeta' fl-atti tal-process fejn hemm mistqarr illi l-pandemija tal-COVID 19 ma jidhirx li halliet xi mpatt negattiv fuq il-kumpanija! Madanakollu is-Socjeta' ntimata xorta hadet decizjoni li tittermina l-impjieg tar-rikorrenti taht il-pretest ta' *redundancy* u issemmi diffikultajiet relatati mal-pandemija COVID-19. Fil-fehma tat-Tribunal dan kollu ma jinkwadrix f'sens logiku. It-Tribunal Industrijali kien jistenna li kieku c-cirkustanzi kienu dawk allegati mill-kumpanija ntimata, kieku l-intimata kien ikollha dover, ghal anqas morali, li ghal anqas tipprowa tapplika il-mekkanizmu tal-*Wage Supplement*, kif ghamlu eluf kbar ohra ta' Employers tul l-egqel zmien tal-Pandemija. Izda is-Socjeta' ntimata ghar-ragunijiet taghha dehrilha mod iehor. Zgur illi l-kumpanija ma tistax taghti l-impresjoni li kellha tnaqqas l-impjegati minhabba diffikultajiet relatati mal-COVID-19 meta l-fatti jindikaw mod iehor. Fl-ahhar mill-ahhar, ir-rikorrenti kienet l-unika impjegata li spiccat bl-impjieg taghha jigi dikjarat mitmum mis-socjeta' ntimata.

It-Tribunal Industrijali iqis illi id-decizjoni li ttiehdet mis-Socjeta' ntimata li tittermina l-impieg tar-Rikorrenti abbazi ta' allegata *redundancy* ma hijix skont il-ligi. Dan ghaliex is-Socjeta' ntimata naqset illi tipprowa fattwalment illi t-terminazzjoni tal-impjieg kienet wahda realment abbazi ta' *redundancy*. Il-kumpanija naqset ukoll illi tipprowa illi zammet mal-

principju tal-*last in, first out*. Wara li giet imkeccija r-rikorrenti, is-socjeta ntimata impjegat persuna ohra. Dan kollu jkompli jixhet dubji serji fuq il-verzjoni tal-kumpanija ntimata li minn banda sostniet li kellha tnaqqas in-nies minhabba diffikultajiet finanzjarji u minn banda l-ohra spiccat timpjega persuna ohra, fi kliem l-istess socjeta' ntimata, bi *skills set* superjuri!

Fil-kwadru tal-fatti kollha kif jemergu mill-provi mressqa, huwa car f' mohh it-Tribunal illi t-terminazzjoni tal-impjieg tar-rikorrenti ma' kienitx abbazi ta' *redundancy* genwina.

DECIDE:

Ghaldaqstant dan it-Tribunal, wara li ezamina s-sottomissjonijiet, ix-xhieda u d-dokumenti kollha, qed jiddeciedi li t-tkeccija tar-rikorrenti kienet decizjoni ingusta u ghalhekk hemm lok li tinghata kumpens.

Il-Kumpens qed jigi stabbilit fl-ammont ta' Tnax il-elf u hames mitt Euro (12,500), liema kumpens ghandu jithallas mis-Socjeta' ntimata fi zmien xahar mid-data ta' din id-decizjoni.

A tenur tal-Avviz Legali Nru 48 tal-1986, it-Tribunal jillikwida d-drittijiet dovuti lill kull min assista lill-partijiet fl-ammont ta' tlieta u disghin Euro u sbatax il-Centezmu (Euro 93.17) kull wiehed.

B'hekk tintemm din il-kwistjoni tax-xoghol.

(Iffirmat)

Is-Sur John Bencini

Chairperson

Vera kopja

Daniela Attard
Ghas-Segretarja